

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case Number AC-2013-12

ARTHUR CARMINE JENKINS
2682 Bishop Drive, #212
San Ramon, California 94583

DEFAULT DECISION AND ORDER

(Gov. Code, § 11520)

Certified Public Accountant Certificate
Number 43697

Respondent.

FINDINGS OF FACT

1. On or about November 30, 2012, complainant Patti Bowers, in her official capacity as Executive Officer of the California Board of Accountancy (CBA), Department of Consumer Affairs, filed Accusation Number AC-2013-12 against respondent Arthur Carmine Jenkins before the CBA.

2. On or about October 11, 1985, the CBA issued Certified Public Accountant Certificate Number 43697 to respondent. This certified public accountant certificate expired on September 30, 2010, and has not been renewed. The CBA has jurisdiction to adjudicate this case as per Business and Professions Code section 5109.

3. On or about December 4, 2012, respondent was served by certified and first class mail copies of Accusation Number AC-2013-12, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at respondent's address of record which, pursuant to California Code of Regulations, title 16, section 3, is required to be reported and maintained with the CBA. Respondent's address of record was and is:

2682 Bishop Drive, #212
San Ramon, California 94583

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1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c), and/or Business and Professions Code section
3 124.

4 5. On or about December 18, 2012, the aforementioned certified and first class
5 documents that were sent to respondent's address of record were returned by the United States
6 Postal Service marked "Addressee Unknown." The address on the documents was the same as
7 the address on file with the CBA. Respondent has failed to maintain an updated address with the
8 CBA and the CBA has made attempts to serve respondent at the address on file. Respondent has
9 not made himself available for service and therefore has not availed himself of his right to file a
10 notice of defense and appear at hearing.

11 6. Government Code section 11506, subdivision (c), states, in pertinent part:

12 "The respondent shall be entitled to a hearing on the merits if the respondent files a notice
13 of defense, and the notice shall be deemed a specific denial of all parts of the accusation not
14 expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
15 right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
18 Number AC-2013-12.

19 8. Government Code section 11520, subdivision (a), states, in pertinent part:

20 "If the respondent either fails to file a notice of defense or to appear at the hearing, the
21 agency may take action based upon the respondent's express admissions or upon other evidence
22 and affidavits may be used as evidence without any notice to respondent."

23 9. Pursuant to its authority under Government Code section 11520, the CBA finds
24 respondent is in default. The CBA will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained in the
27 packet and on file at the CBA's offices regarding the allegations contained in Accusation Number

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AC-2013-12, finds that the charges and allegations in Accusation Number AC-2013-12 are separately and severally found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 5107, it is determined that the reasonable costs for investigation and enforcement is \$9,173.65 as of January 22, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, respondent Arthur Carmine Jenkins has subjected his Certified Public Accountant Certificate Number 43697 to discipline.

2. The CBA has jurisdiction to adjudicate this case by default.

3. The CBA is authorized to revoke respondent's certified public accountant certificate based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Bus. & Prof. Code, § 5100, subd. (c) (Gross Negligence – Failure to Complete Client's Engagement);

b. Bus. & Prof. Code, § 5100, subd. (c) (Gross Negligence – Failure to Respond to Client);

c. Bus. & Prof. Code, § 5100, subd. (c) (Repeated Negligent Acts);

d. Bus. & Prof. Code, §§ 5037, subd. (b), 5100, subd. (g) (Willful Failure to Timely Furnish Client Records);

e. Bus. & Prof. Code, §§ 5050, subd. (a), 5100, subd. (g) (Willful Practice Without a Valid Permit);

f. Bus. & Prof. Code, § 5100, subd. (g); Cal. Code Regs., tit. 16, § 52, subd. (a) (Willful Failure to Respond to CBA's Inquiry);

g. Bus. & Prof. Code, § 5100, subd. (g); Cal. Code Regs., tit. 16, § 52, subd. (b) (Willful Failure to Respond to CBA's Subpoena); and

h. Bus. & Prof. Code, § 5100, subd. (g); Cal. Code Regs., tit. 16, § 3, subd. (a) (Willful Failure to Change Address of Record).

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8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case Number AC-2013-12

12 **ARTHUR CARMINE JENKINS**
2682 Bishop Drive, #212
13 San Ramon, California 94583

A C C U S A T I O N

14 **Certified Public Accountant Certificate**
Number 43697

15 Respondent.
16

17
18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Patti Bowers brings this Accusation solely in her official capacity as the
21 Executive Officer of the California Board of Accountancy (CBA), Department of Consumer
22 Affairs.

23 2. On or about October 11, 1985, the CBA issued Certified Public Accountant
24 Certificate Number 43697 to respondent Arthur Carmine Jenkins. This CPA certificate expired
25 on September 30, 2010, and has not been renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the CBA under the authority of the following laws.
28 All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), provides:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

5. Section 5050.1, subdivision (a), provides:

“Any person that engages in any act that is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the board. This subdivision is declarative of existing law.”

6. Section 5109 provides:

“The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.”

STATUTORY AUTHORITY

7. Section 5037 provides:

“(a) All statements, records, schedules, working papers and memoranda made by a licensee or a partner, shareholder, officer, director, or employee of a licensee, incident to, or in the course of, rendering services to a client in the practice of public accountancy, except the reports submitted by the licensee to the client and except for records which are part of the client’s records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. No such statement, record, schedule, working paper, or memoranda shall be sold, transferred, or bequeathed, without the consent of the client or

1 his or her personal representative or assignee, to anyone other than one or more surviving partners
2 or stockholders or new partners or stockholders of the licensee, or any combined or merged firm
3 or successor in interest to the licensee.

4 “(b) A licensee shall furnish to his or her client or former client, upon request and
5 reasonable notice:

6 “(1) A copy of the licensee’s working papers, to the extent that those working papers
7 include records that would ordinarily constitute part of the client’s records and are not otherwise
8 available to the client.

9 “(2) Any accounting or other records belonging to, or obtained from or on behalf of, the
10 client which the licensee removed from the client’s premises or received for the client’s account.
11 The licensee may make and retain copies of documents of the client when they form the basis for
12 work done by him or her.”

13 8. Section 5050, subdivision (a), provides:

14 “Except as provided in subdivisions (b) and (c) of this section, in subdivision (a) of Section
15 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this
16 state unless the person is the holder of a valid permit to practice public accountancy issued by the
17 board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section
18 5096).”

19 9. Section 5100 provides, in pertinent part:

20 “After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
21 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing
22 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
23 conduct that includes, but is not limited to, one or any combination of the following causes:

24 ...

25 “(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same
26 or different engagements, for the same or different clients, or any combination of engagements or
27 clients, each resulting in a violation of applicable professional standards that indicate a lack of

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1 competency in the practice of public accountancy or in the performance of the bookkeeping
2 operations described in Section 5052.

3
4 “(g) Willful violation of this chapter or any rule or regulation promulgated by the board
5 under the authority granted under this chapter.”

6 10. California Code of Regulations, title 16, section 3, provides, in pertinent part:

7 “(a) Address Notification – Individual Licensees

8 “(1) Each licensee shall notify the Board of any change in his or her address of record
9 within 30 days after the change. The address of record is public information. If the address of
10 record is a post office box or mail drop, the change of address notification shall include the street
11 address of either the licensee’s primary place of employment or his or her residence.

12 “(2) For purposes of this section, ‘licensee’ includes any holder of an active, inactive,
13 suspended, or expired certified public accountant license or public accountant license issued by
14 the Board which is not canceled or revoked.”

15 11. California Code of Regulations, title 16, section 52, provides, in pertinent part:

16 “(a) A licensee shall respond to any inquiry by the Board or its appointed representatives
17 within 30 days. The response shall include making available all files, working papers and other
18 documents requested.

19 “(b) A licensee shall respond to any subpoena issued by the Board or its executive officer or
20 the assistant executive officer in the absence of the executive officer within 30 days and in
21 accordance with the provisions of the Accountancy Act and other applicable laws or regulations.”

22 12. California Code of Regulations, title 16, section 68, provides:

23 “A licensee, after demand by or on behalf of a client, for books, records or other data,
24 whether in written or machine sensible form, that are the client’s records shall not retain such
25 records. Unpaid fees do not constitute justification for retention of client records.

26 “Although, in general the accountant’s working papers are the property of the licensee, if
27 such working papers include records which would ordinarily constitute part of the client’s books

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1 and records and are not otherwise available to the client, then the information on those working
2 papers must be treated the same as if it were part of the client's books and records."

3 13. California Code of Regulations, title 16, section 87, provides, in pertinent part:

4 "(a) 80 Hours.

5 "As a condition for renewing a license in an active status, a licensee shall complete at least
6 80 hours of qualifying continuing education as described in Section 88 in the two-year period
7 immediately preceding license expiration, and meet the reporting requirements described in
8 Section 89(a). A licensee engaged in the practice of public accountancy as defined in Section
9 5051 of the Business and Professions Code is required to hold a license in an active status. No
10 carryover of continuing education is permitted from one license renewal period to another.

11 ...

12 "(g) Failure to Comply.

13 "A licensee's willful failure to comply with the requirements of this section shall constitute
14 cause for disciplinary action pursuant to Section 5100(g) of the Accountancy Act."

15 COST RECOVERY

16 14. Section 125.3, subdivision (a), provides:

17 "Except as otherwise provided by law, in any order issued in resolution of a disciplinary
18 proceeding before any board within the department or before the Osteopathic Medical Board,
19 upon request of the entity bringing the proceeding may request the administrative law judge to
20 direct a licensee found to have committed a violation or violations of the licensing act to pay a
21 sum not to exceed the reasonable costs of the investigation and enforcement of the case."

22 15. Section 5107, subdivision (a), provides:

23 "The executive officer of the board may request the administrative law judge, as part of the
24 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
25 found to have committed a violation or violations of this chapter to pay to the board all reasonable
26 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
27 The board shall not recover costs incurred at the administrative hearing."

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FACTUAL BACKGROUND

16. In February 2011, M.G. and K.G. sent their tax documents to respondent and engaged him to prepare and file their 2010 tax returns.

17. On April 15, 2011, respondent wrote an email to the G.'s. An address for respondent in Dublin, California, was at the bottom of the email. The email stated, "I'm still cranking out returns as fast as I can. . . . We are doing e-filing for most everyone, it is cutting down on the turnaround time and making sure you get your returns in time to file before the deadline. . . . Look for an email from me; it will take you to my secure email service (LeapFile) where you will get a copy of your returns and the necessary e-file authorizations to sign. Please sign the forms and get them back to me so that I can e-file the returns by Monday [April 17]."

18. The G.'s never received another email from respondent. The G.'s sent emails, made telephone calls, and even a personal visit to respondent's office to get information about the status of their tax returns. Respondent did not reply.

19. On or about June 28, 2011, the G.'s requested respondent to send them their tax records. They also filed a complaint with the CBA on July 1, 2011.

20. On or about July 18, 2011, the CBA sent a certified letter to respondent telling him to send the G.'s records to them, and explain to the CBA why he did not return the records earlier. The CBA also ordered respondent to stop practicing as a certified public accountant until he renewed his certificate and provide proof that he complied with continuing education requirement for certificate renewal. The CBA asked for respondent's reply within 30 days. The letter was sent to respondent's address of record, as well as the Dublin address on his April 17 email to the G.'s. The letter sent to his address of record was returned undelivered; the letter sent to the Dublin address was signed for and delivered. Respondent however never replied to the letter.

21. On August 23, 2011, the CBA left a telephone message for respondent stating that it had not received his reply to its letter. Respondent did not reply.

22. On or about August 30, 2011, the CBA sent another certified letter to respondent regarding the G.s' complaint, as well as informing him that he was violating CBA rules for practicing without a certificate, failing to respond to CBA inquiries, and failing to change his

1 address of record. The CBA asked for respondent's reply within 15 days. The letter again was
2 sent to respondent's address of record as well as the Dublin address. The letter sent to his address
3 of record again was returned undelivered; the letter sent to the Dublin address again was signed
4 for and delivered. And again, respondent never replied to the letter.

5 23. On September 16, 2011, the CBA tried to telephone respondent, but could not leave a
6 message because his voice mail box was full. On the same day, the CBA sent an email to
7 respondent asking for him to contact the CBA by September 19. Respondent did not reply.

8 24. On September 20, 2011, the CBA left a telephone message for respondent to contact
9 the CBA. On that same day, respondent sent an email to the CBA's investigator with an attached
10 letter. The letter states, in pertinent part:

11 "[M]y apologies to you and the California Board of Accountancy for not responding
12 sooner. This has not been a good year for me and my family. And unfortunately, several of my
13 clients have also been short changed as a result and have not gotten the professional service that
14 they have come to expect from me.

15 "This summer has seen both of my parents undergo major surgeries. . . . Since they live in
16 rural Nevada County and the doctors and hospitals were in Sacramento, I've spent most of my
17 summer doing all of the driving for them, shopping, cooking, cleaning and maintenance of their
18 home, etc. And on top of all this, my wife broke her ankle in a bad fall and has spent most of this
19 summer on crutches. Not that any of this is pertinent to Mr. [G.'s] allegations; just the
20 background of what I have been dealing with all summer. I guess this is the downside of being a
21 sole practitioner with no one in the office to take over for me while I had to deal with this. .

22 "As for Mr. [G.'s] allegations, they are true. I had been engaged to prepare his federal and
23 California personal tax returns for 2010. I did not respond to his request for his original tax
24 documents that he gave me to prepare his returns. There was no excuse for this although I
25 thought he had worked around it because I received an email dated July 29, 2011 from his new
26 tax preparer that his 2010 tax returns had been prepared and filed. I have since returned his tax
27 documents. . . . [The G.'s received their records on or about September 22, 2011.]
28

1 "As for the second issue regarding my CPA license, that was something I was going to deal
2 with this summer. And to be quite honest, I had forgotten all about it with the issues with my
3 parents. I will cease holding myself out as a CPA immediately. I will pull out my files to see
4 what needs to be done with regards to renewing my license. I don't think I have taken any CPE
5 courses since June 29, 2009. As I have a tax only practice, I have not issued any financial
6 statements in many years. Not that this alleviates the need to maintain my CPA license or the
7 continuing education requirements, but at least there are no other violations for your office to deal
8 with."

9 25. The CBA found that respondent is listed on the CalCPA website under the family law
10 section. His address on that site is in Nevada City, California.

11 26. On or about September 27, 2011, the CBA sent a certified letter to respondent
12 requesting copies of tax returns he had prepared and continuing education courses he had
13 completed. The letter also informed him of the requirement to notify the CBA of address
14 changes. The letter was sent to respondent's Dublin and Nevada City addresses. Both letters
15 were signed for and delivered. Respondent never replied to the letter.

16 27. On December 5, 2011, the CBA sent a subpoena by certified mail to respondent
17 ordering him to produce examples of tax returns he prepared in 2011, continuing education
18 courses he had completed or was in the process of completing, and a change of address form.
19 The subpoena was sent to respondent's Dublin and Nevada City addresses. Both subpoenas were
20 signed for and delivered. Respondent never produced the ordered documents or replied to the
21 subpoena.

22 **FIRST CAUSE FOR DISCIPLINE**
23 **Gross Negligence – Failure to Complete Client's Engagement**
24 **Bus. & Prof. Code, § 5100, subd. (c)**

25 28. The allegations of paragraphs 16-27 are realleged and incorporated by reference as if
26 fully set forth.

27 29. Respondent has subjected his certified public accountant certificate to disciplinary
28 action under section 5100, subdivision (c), for gross negligence. As set forth in paragraphs 16-27
above, respondent was engaged to complete and file the G.'s 2010 tax returns and failed to do so.

1 **SECOND CAUSE FOR DISCIPLINE**
2 **Gross Negligence – Failure to Respond to Client**
3 **Bus. & Prof. Code, § 5100, subd. (c)**

4 30. The allegations of paragraphs 16-27 are realleged and incorporated by reference as if
5 fully set forth.

6 31. Respondent has subjected his certified public accountant certificate to disciplinary
7 action under section 5100, subdivision (c), for gross negligence. As set forth in paragraphs 16-27
8 above, respondent failed to respond to the G.'s repeated requests for information about the status
9 of their tax returns.

10 **THIRD CAUSE FOR DISCIPLINE**
11 **Repeated Negligent Acts**
12 **Bus. & Prof. Code, § 5100, subd. (c)**

13 32. The allegations of paragraphs 16-27 are realleged and incorporated by reference as if
14 fully set forth.

15 33. Respondent has subjected his certified public accountant certificate to disciplinary
16 action under section 5100, subdivision (c), for repeated negligent acts. As set forth in paragraphs
17 16-27 above, respondent was engaged to complete and file the G.'s 2010 tax returns and failed to
18 do so, and failed to respond to the G.'s repeated requests for information about the status of their
19 tax returns.

20 **FOURTH CAUSE FOR DISCIPLINE**
21 **Willful Failure to Timely Furnish Client Records**
22 **Bus. & Prof. Code, §§ 5037, subd. (b), 5100, subd. (g)**

23 34. The allegations of paragraphs 16-27 are realleged and incorporated by reference as if
24 fully set forth.

25 35. Respondent has subjected his certified public accountant certificate to disciplinary
26 action under sections 5037, subdivision (b), and 5100, subdivision (g), for willful failure to
27 furnish client records. As set forth in paragraphs 16-27 above, respondent failed to timely send to
28 the G.'s their tax records after receiving their request that he do so.

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FIFTH CAUSE FOR DISCIPLINE
Willful Practice Without a Valid Permit
Bus. & Prof. Code, §§ 5050, subd. (a), 5100, subd. (g)

36. The allegations of paragraphs 16-27 are realleged and incorporated by reference as if fully set forth.

37. Respondent has subjected his certified public accountant certificate to disciplinary action under sections 5050, subdivision (a), and 5100, subdivision (g), for willful practice without a valid permit. As set forth in paragraphs 2 and 16-27 above, respondent's certified public accountant certificate expired on September 30, 2010, yet in 2011 he engaged to complete the G.'s 2010 taxes, represented that he is preparing taxes and has a tax practice, and was listed on the CalCPA website as a certified public accountant.

SIXTH CAUSE FOR DISCIPLINE
Willful Failure to Respond to CBA's Inquiry
Bus. & Prof. Code, § 5100, subd. (g); Cal. Code Regs., tit. 16, § 52, subd. (a)

38. The allegations of paragraphs 16-27 are realleged and incorporated by reference as if fully set forth.

39. Respondent has subjected his certified public accountant certificate to disciplinary action under section 5100, subdivision (g), and California Code of Regulations, title 16, section 52, subdivision (a), for willful failure to respond to the CBA's inquiry. As set forth in paragraphs 16-27 above, respondent failed to respond within 30 days to the CBA's letter of July 18, 2011.

SEVENTH CAUSE FOR DISCIPLINE
Willful Failure to Respond to CBA's Subpoena
Bus. & Prof. Code, § 5100, subd. (g); Cal. Code Regs., tit. 16, § 52, subd. (b)

40. The allegations of paragraphs 16-27 are realleged and incorporated by reference as if fully set forth.

41. Respondent has subjected his certified public accountant certificate to disciplinary action under section 5100, subdivision (g), and California Code of Regulations, title 16, section 52, subdivision (b), for willful failure to respond to the CBA's subpoena. As set forth in paragraphs 16-27 above, respondent failed to respond within 30 days to the CBA's subpoena.

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EIGHTH CAUSE FOR DISCIPLINE
Willful Failure to Change Address of Record

Bus. & Prof. Code, § 5100, subd. (g); Cal. Code Regs., tit. 16, § 3, subd. (a)

42. The allegations of paragraphs 16-27 are realleged and incorporated by reference as if fully set forth.

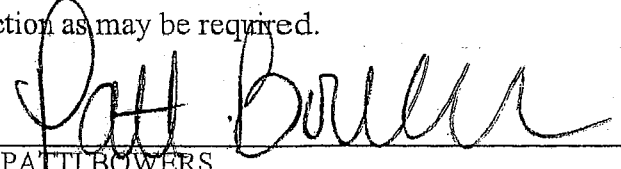
43. Respondent has subjected his certified public accountant certificate to disciplinary action under section 5100, subdivision (g), and California Code of Regulations, title 16, section 3, subdivision (a), for willful failure to change his address of record. As set forth in paragraphs 16-27 above, the CBA's mail went undelivered to respondent's address of record, but was signed for and accepted at both his Dublin and Nevada City addresses.

PRAYER

WHEREFORE, complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the CBA issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 43697 issued to Arthur Carmine Jenkins;
2. Ordering Arthur Carmine Jenkins to pay the CBA the reasonable costs of the investigation and enforcement as provided by statute; and
3. Taking such other and further action as may be required.

DATED: November 30, 2012


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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